IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

Bail Appl..No. 5586 of 2007()

CRIME NO. 513/2006 OF ANGAMALY POLICE STATION

PETITIONER/3RD ACCUSED

SAJIKUMAR,S/O. CHELLAPPAN,AGED 36 YEARS
KYLAS VEEDU, MYLAMON KARA,
KUNNAMTHANAM VILLAGE,MALLAPPALLY.

BY ADV. SRI.S.PRASANTH

RESPONDENTS: COMPLAINANT

STATE OF KERALA,REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5586 of 2007

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Dated this the 18th day of September, 2007

ORDER

Application for regular bail. The petitioner is the 3rd accused. The crux of the allegation is that 31x35 litres of spirit was transported in a Scorpio Van by the accused persons. Investigation is complete. Final report has already been filed. The petitioner has not been arrested so far. Cognizance has been taken and committal proceedings have been registered by the learned Magistrate. The petitioner apprehends that he may be arrested in execution of the non bailable warrant issued by the learned Magistrate. The petitioner in these circumstances prays that anticipatory bail may be granted to the petitioner.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that there is absolutely no circumstance justifying invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner may be directed to appear before the learned Magistrate and seek regular bail in the normal and ordinary course, submits the learned Public Prosecutor.

3. I find merit in the opposition by the learned Public Prosecutor. There are no features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C.

4. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C

can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

5. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

6. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously- on the date of surrender itself.

(R.BASANT, JUDGE)

sj